IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

CRL.A.No. 583 of 1999()

CC.821/1997 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHERTHALA

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APPELLANT/COMPLAINANT:

VARGHESE,S/O.KAKKO,PAREPARAMBU VEEDU,
EZHAPUNNA PANCHAYATH WARD NO.1, EZHUPUNNA VILLAGE,
CHERTHALA TALUK.

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS/ACCUSED AND STATE:

1.SAJEEVAN,S/O.THANKAPPAN PILLAI, KANDATHIL,
AROOR PANCHAYATH, WARD NO.9, AROOR, CHERTHALA TALUK.

2.STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.583 OF 1999 ()

Dated this the 29th day of November, 2006

JUDGMENT

This appeal is filed by the complainant against the acquittal of the accused under Section 256(1) of the Code of Criminal Procedure. Even though on several occasions when the case was posted but accused was not present and steps were pending for production of the accused. Before the production of the accused accused was acquitted for the absence of the complainant on one day. Trial court should not have acquitted the accused under Section 256 (1) of Cr.P.C. merely because complainant was absent on one day of posting. His presence was not mandatory on that day as summons was not send on the accused. Complainant had also explained the reason for his absence. Considering the facts and circumstances of the case, I am of the opinion that one more opportunity should be given and hence the impugned order is set aside and I remand the matter to the Trial court for continuing the proceedings. Appellant shall furnish correct

address of the accused to the trial court before the next posting date. Appellant should be present before the Trial court on 9.1.2007. Fresh summons should be issued to the accused. Hence appeal is allowed by way of remand.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.583 OF 1999

JUDGMENT

29th November, 2006